



Federal Communications Commission  
Washington, D.C. 20554

August 8, 2012

Case Identifier: CGB-CC-0860

Rev Productions  
Attn: Laura Grochocki  
440 N. McClurg Court, Ste 816  
Chicago, IL 60611

Dear Ms. Grochocki,

This is to advise you that the Consumer and Governmental Affairs Bureau (CGB) of the Federal Communications Commission ("FCC") has reviewed your petition for exemption from the closed captioning rules. CGB has found that your petition provides some, but not all, of the information needed for us to make a determination as to whether or not the FCC closed captioning requirements would be economically burdensome for you.

We note as an initial matter that your petition requests that we consider Section 79.1(d)(12) of the FCC's Rules, 47 C.F.R. § 79.1(d)(12), in our evaluation of your exemption request. Section 79.1(d)(12) states, "[n]o video programming provider shall be required to expend any money to caption any channel of video programming producing annual gross revenues of less than \$3,000,000 during the previous calendar year other than the obligation to pass through video programming already captioned when received pursuant to paragraph (c) of this section." Given that Rev Productions seeks an exemption for an individual video program, not a channel of video programming, the specific \$3,000,000 general revenue exemption of Section 79.1(d)(12) does not appear to apply to Rev Productions' particular circumstances. Your petition also cites Section 79.1(d)(11) of the FCC's Rules, 47 C.F.R. § 79.1(d)(11), which provides that "[n]o video programming provider shall be required to expend any money to caption any video programming if such expenditure would exceed 2 percent of the gross revenues received from that channel during the previous calendar year." Because you have not provided evidence or information that Rev Productions has expended 2 percent of its gross revenues on captioning during the previous calendar year, we are unable to assess whether this exemption is applicable to you. We nonetheless note that both of these provisions are self-implementing exemptions which do not require prior FCC approval if the specific criteria are met.

Regarding the remainder of your petition, if you wish for the petition to receive further consideration for a closed captioning exemption, you must supplement your petition by providing us with the information described below, **by September 7, 2012**:

- Documentation of petitioner's financial status sufficient to demonstrate its inability to afford closed captioning – for example, profit and loss statements or bank statement information (This should not just include the resources devoted to or the costs associated with the television program at issue.);
- Information about the costs associated with captioning the program for which you are requesting an exemption; and,

- Verification that you have sought additional sponsorship sources or other sources of revenue for captioning, and that, even if these efforts have not successfully produced assistance, you do not otherwise have the means to provide captioning for the program(s).

If you do not file this additional information **by September 7, 2012**, or the information that you provide is still not sufficient for us to make a determination, your petition will be dismissed without prejudice to re-filing **on November 6, 2012**, which is 90 days from the date of this letter, and you will be required to begin providing closed captions for your programming **on November 7, 2012**.

Here is additional information that may help you better understand how the FCC processes individual requests for captioning exemptions:

### **THE PETITION PROCESS – What a Petition Must Contain**

The FCC's process for handling closed captioning exemption petitions has multiple steps. CGB is responsible for reviewing and deciding the merits of exemption petitions.

When CGB receives a petition, it must first determine whether a petition contains sufficient information to be placed on public notice (*i.e.*, released to the public) so that the public can comment on its merits. CGB looks to whether the petition contains up-to-date evidence, supported by affidavit, to show that it would be economically burdensome to provide closed captioning for the specific programming for which an exemption is sought. Section 713(e) of the Communications Act and the FCC's rules at 47 C.F.R. § 79.1(f)(2) define "economically burdensome" as "significant difficulty or expense." In determining whether the provision of closed captions will cause significant difficulty or expense, these provisions require the FCC to consider four factors: (1) the nature and cost of the closed captions for the programming; (2) the impact on the operation of the provider or program owner; (3) the financial resources of the provider or program owner; and (4) the type of operations of the provider or program owner.

In order to prove that the provision of closed captioning would impose an economic burden when applying the above four factors, a petition must contain the following:

1. Documentation of the petitioner's financial status sufficient to demonstrate the petitioner's inability to afford closed captioning – for example, profit and loss statements or bank statement information (This should not just include the resources devoted to or the costs associated with the television program at issue.);
2. Information about the costs associated with captioning the specific program(s) for which the petitioner is requesting an exemption;
3. Verification that the petitioner has sought closed captioning assistance (*e.g.*, funding, services) from its video programming distributor including the extent to which such assistance has been provided or rejected;
4. Verification that the petitioner has sought additional sponsorship sources or other sources of revenue for captioning, and that, even if these efforts have not successfully produced assistance, the petitioner does not otherwise have the means to provide captioning for the program(s); and,
5. Information on the type of the petitioner's operation(s) and the impact that providing captions would have on its programming activities, for example, the extent to which its programming might not be shown if it is required to provide captions.

Each petition should contain a list of the program(s) for which an exemption is being sought and it may describe other factors that the petitioner deems relevant to an exemption determination, as well as any alternatives that could be a reasonable substitute for the closed captioning requirement. Finally, each petition **must be accompanied by an affidavit** (*i.e.*, a written sworn statement made under oath before an official attesting to the truthfulness and accuracy of the petition) **or must be signed under penalty of perjury**.

We advise petitioners to carefully review the FCC's recently adopted *Memorandum Opinion and Order, Order, and Notice of Proposed Rulemaking in Anglers for Christ Ministries, Inc.*, which can be found at <http://transition.fcc.gov/cgb/dro/caption.html> and corresponding FCC rules (47 CFR § 79.1(f)(2)-(3)). These documents describe the requirements for obtaining an economically burdensome exemption in detail.

## **THE PETITION PROCESS – What Happens When a Petition is Sufficient or Deficient**

If CGB determines that the petition provides *sufficient* information upon which to make a determination of whether or not to grant a closed captioning exemption, it will place the petition on public notice in CG Docket No. 06-181 at <http://fjallfoss.fcc.gov/ccfs/>. Members of the public will then have 30 days to file comments on and/or oppositions to the petition, after which the petitioner will have 20 days to respond. At the end of this timeframe, CGB will review the petition, along with information provided in any comments and responses received, to determine whether providing captioning would be economically burdensome for the petitioner. While a petition is pending, the program at issue does not need to be captioned.

If, however, CGB determines that the petition and supporting documents do not provide sufficient information needed for the FCC to make a determination as to the merits of its petition, the petition will be considered *deficient* and CGB will not place the petition on public notice.

## **YOUR PETITION**

As noted above, CGB has determined that the petition that you filed with the FCC on January 26, 2009, which, by letter filed May 17, 2012, you stated remains current and accurate provided some information, but it failed to provide sufficient information for us to make a determination as to whether the provision of closed captioning would be economically burdensome for you. In this regard, we note that you provided financial information, information about captioning costs, verification that you had inquired about closed captioning assistance from your video programming distributor, and an affidavit. With regard to your submitted financial information, you provided information for 2007. We need more up-to-date information in order to assess your current financial status. Along these lines, we note that your initial request was submitted on behalf of Rev Productions whereas your more recent submission was done in the name of Haute House Entertainment. It would be helpful for you to explain the relationship, if any, between the two entities and to provide the financial information for whichever of the two entities is producing the program or, if applicable, both entities. Additionally, we need updated information regarding your estimated closed captioning costs. Further, while your petition states that sponsors would require you to insert sponsor slides in the program, you do not state whether you have attempted to obtain such sponsors. We conclude that your petition is not sufficient to be placed on public notice.

If you wish for this petition to receive further consideration for a closed captioning exemption for your programming, you must supplement your petition by filing the information listed in the fourth paragraph of this letter **by September 7, 2012**, which is 30 days from the date of this letter. If you do not file this additional information by that date or the information that you provide is still deficient, your petition will be dismissed without prejudice to re-filing **on November 6, 2012**, and you will be required to begin providing closed captions for this programming **on November 7, 2012**.

If you decide to supplement your petition, your petition, as well as any supporting financial information provided, will be available for public inspection. If your petition contains confidential information, you may request “confidential treatment,” *i.e.*, that it not be shared with members of the public, pursuant to FCC rules. *See* 47 C.F.R. § 0.459. If you provide information for which you want “confidential treatment,” you must also submit a second version of your petition with the confidential information redacted (this must be submitted *along with* your request for confidential treatment). The redacted version will be publicly disclosed. If your request for confidential treatment is granted, the “public version” of your petition must still contain sufficient documentation to support your claim that closed captioning would be economically burdensome. This documentation is needed so that the public understands the basis for your exemption request and can comment on its merits.

If you have additional questions pertaining to the filing of an exemption request, please contact the FCC’s Disability Rights Office at [captioningexemption@fcc.gov](mailto:captioningexemption@fcc.gov).

Roger Holberg  
Attorney, Disability Rights Office  
Consumer and Governmental Affairs Bureau

## **Instructions for Filing a Supplement to a Closed Captioning Exemption Petition**

You must send the FCC an original and two (2) copies of the information supplementing your previously filed petition for a closed captioning exemption. Filings must be sent by hand or messenger delivery, commercial overnight courier, or by first class or overnight U.S. Postal Service mail.

For U.S. Postal Service mail, including Express Mail, Priority Mail, and First Class Mail, please use the following address:

Office of the Secretary  
Federal Communications Commission  
Attention: Disability Rights Office, Room 3-B431  
445 12th Street, SW  
Washington, DC 20554

For commercial overnight mail, such as Federal Express or United Parcel Service, please use the following address:

Office of the Secretary  
Federal Communications Commission  
Attention: Disability Rights Office, Room 3-B431  
9300 East Hampton Drive  
Capitol Heights, MD 20743

### **Electronic filing and faxes of petitions will not be accepted.**

Please wait *at least two weeks* before contacting FCC staff to make inquiries about whether your petition has been received. **You must include the case identifier number at the top of the acknowledgement you previously received, which is also at the top of this letter, in all correspondence with the FCC regarding your petition.**